DEPT. 302

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

Date: July 3 1991

Honorable	JAN A. PLUIM	, Judge
	J. O'NEAL	, Court Attendant
	G. HASSEN	, Deputy Clerk
	T. Blaylock	, E/R Monitor

C 682 604 (Parties and Counsel checked if present)

McDonnell Douglas Corporation	Counsel For Plaintiff	Robert D. Crockett Alan Chabot
vs.		
State Board of Equalization	Counsel For Defendant	Anthony Sgherzi, Deputy Atty. Gen.

NATURE OF PROCEEDINGS: Civil AO Non Jury

Trial resumes on case continued from July 1, 1991. Counsel for Plaintiff and counsel for defendant make closing arguments to the Court. The Court makes the following findings:

1. As to the Export/Import clause: The Court finds that the replacement parts did not enter the stream of exportation until they left San Ysidro by Mexican common carrier. As stated in the *Farmers' Rice* case and the Administrative Code, "Export has not begun where property is transported from a point in this state to a warehouse or other collecting point in this state even though it

is intended that the property then be transported, and is in fact, transported to another country." The Court also finds that the parts had not started on their "final and continuous journey" until they left San Ysidro. Thus, the Court concludes the replacement parts were not in the exportation process at the time they left McDonnell Douglas in Long Beach and were therefore taxable.

2. As to Revenue and Taxation Code Section 6385: The Court finds that Section 6385 of the California Revenue and Taxation Code does not qualify the sale between 78 & 81 as an exempt sale to a common carrier. The parts in this case were shipped by UPS or a US common carrier from Long Beach to San Ysidro and not by a facility of the purchasing carrier Aeromexico, as required by Sales and Tax Regulation 1621. Further the parts were not shipped to an out-of-state destination. In January of 1980, Section 6385 was amended by adding subsection (b). Said subsection is not helpful to plaintiff because Aeromexico did not transport the parts itself. They were transported either by U. S. common carrier or Mexican common carriers.

3. As to Revenue and Taxation Code Section 6387: Section 6387 is not applicable here because the evidence does not support the fact that Aeromexico is a "forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation". Also Annotation 325.1500 of the Business Taxes Law Guide holds that "where an export packer is also a purchaser the exemption of 6387 does not apply."

Minutes Entered: July 3, 1991

In making the above findings the Court considered the following facts:

1. Bills of Lading were issued not just in Long Beach, but also in San Ysidro.

2. The invoices show that the parts were to be shipped within the State of California by common U.S. carriers.

3. Once the parts left Long Beach, McDonnell Douglas lost control over the parts.

4. The parts were shipped from McDonnell Douglas to Aeromexico is San Ysidro, CA.

5. Some of the invoices reflected that sales tax was billed to Aeromexico by McDonnell Douglas Co.

6. There was no evidence presented that the seller and purchaser agreed that a particular form of transportation was to take place between San Ysidro and Mexico City. In fact there was no contract between Am-Mex International and Aeromexico to deliver the parts to Mexico City.

7. There was no evidence showing that at the time of the purchase, other than delivery to San Ysidro, that a date of exportation was contemplated to and agreed upon by purchaser and seller.

8. Unlike the *Gough* case there was no exportation number received for the parts.

9. All customs arrangements for importing into Mexico were made after shipment had been made to San Ysidro.

Counsel for the Defendant shall give notice of this ruling and prepare judgment herein.
